

**COMPLAINT INVESTIGATION  
LYON COUNTY SCHOOL DISTRICT  
(#LY091608)**

**INTRODUCTION**

On 9/16/08, the Nevada Superintendent of Public Instruction received a complaint dated 9/11/08 from the parent, alleging violations in the special education program of a student with disabilities attending school in the Lyon County School District (LCSD). The complaint was amended, as a result of additional written clarification provided by the complainant on 9/18/08. An investigation team was appointed to examine the allegations that the LCSD did not implement the student's Individualized Educational Program (IEP) because: 1) on 9/10/08 the student was not put on the bus at the end of the day but brought to the parent instead; 2) on 9/10/08 the behavior plan was not implemented when the student acted out; 3) on 9/10/08 the daily log said the student had a good day when the aide verbally told the parent he had a bad day; 4) the student was left on the bus after it arrived at school on 9/4/08 and on 9/11/08; 5) the aide didn't have the CPR and First Aid training required by the IEP; and, 6) on a day that the regular education teacher was absent (9/15/08) the student was placed in the resource room instead of the regular classroom as required by the IEP.

**COMPLAINT ISSUES**

The allegations in the complaint raised the following issues under the jurisdiction of the Nevada Department of Education (NDE):

- ISSUE 1:** Whether the LCSD implemented the student's 9/9/08 IEP with regard to:
- a. The behavior plan, specifically when the student acts out
  - b. Transportation procedures, specifically taking the student to and from home and the timing of taking him off the bus
  - c. Maintenance of an accurate daily log
  - d. An aide certified in CPR and First Aid
  - e. Placement

**PERSONS INTERVIEWED**

The investigation team interviewed the following persons:

- Parent
- Special services division director
- Special education teacher
- Special education aide (aide)

**DOCUMENTS REVIEWED**

The investigation team reviewed the following documents:

1. 7/18/08 IEP revision and behavior plan
2. 9/9/08 IEP revision
3. 9/9/08 behavior plan revision (behavior plan)
4. Daily notes from 7/22/08 through 10/3/08
5. Student attendance records through 9/26/08
6. 2008/2009 school calendar
7. District letters to parent dated 9/4/08 and 9/22/08

The investigation team also reviewed the following material:

- Nevada Administrative Code (NAC), Chapter 388
- Individual with Disabilities Education Act (IDEA) Regulations, 34 CFR Part 300
- *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811 (9<sup>th</sup> Cir. 9/6/07)

## **FINDINGS OF FACT**

This investigation involved an elementary school student with autism who attended school in the LCSD during the 2008/2009 school year. A review of documents, as well as interviews with the parent, special services division director, the special education teacher and the aide revealed the following facts.

The student began school on 8/25/08 with a 7/18/08 IEP in effect. The 7/18/08 IEP was revised on 9/9/08. The only change in the 9/9/08 IEP was a change in placement from 95% time in the regular education environment to 55% time in the regular education environment. Hereinafter the 7/18/08 and 9/9/08 IEPs are referred to as the IEP. The student has a full-time aide.

### **Behavior Plan**

The student had a behavior plan in effect. The student's behavior plan required that the student be placed in a time-out chair outside of the classroom as a consequence of being physically aggressive. If the behavior continued to escalate, the behavior plan required that the student be removed to the special education classroom. If the student continued to be aggressive in the special education classroom, the special education teacher was to contact the parent to determine if the student needed to be removed for the remainder of that school day.

The parent stated that on 9/10/08 the aide told her that the student had been acting out and was sent to the principal's office. The aide reported that the student had neither been acting out during the day nor removed to the principal's office. She reported that she told the parent a substitute principal had visited the student's classroom that day and "it was nice that the student had an opportunity to say hello to him." The aide reported that the parent had misunderstood what she told her and attempted to explain the misunderstanding to the parent on several occasions after the parent repeated the allegation that the student had been sent to the principal's office on 9/10/08. The special services division director confirmed that the student had not been taken to the principal's office on 9/10/08.

### **Transportation**

The IEP lists transportation as a related service "to be provided to and from school five days per week." The student's IEP under Supplementary Aids and Services lists the use of a seat belt and harness, when necessary on the bus and that 1:1 adult support will be provided to and from the bus. There are no other transportation requirements in the student's IEP.

The parent and district staff reported that on 9/10/08, the aide, seeing that the parent was on the school grounds, brought the student to her at the end of the school day rather than putting him on the bus to go home. On this occasion the parent drove the student home.

The parent also reported that the aide was late removing the student from the bus when it arrived at school on 9/4/08, and on 9/11/08, that he was the last student on the bus and that she (the parent) had to remove him herself. District staff reported that on these two days, the bus had arrived several minutes before 7:30 a.m., its scheduled arrival time and the workday starting time for the aide. The special services division director, special education teacher and aide reported that on both occasions there were staff members available to remove the student at 7:30 a.m., but that the parent removed him before a staff member could get on the bus. After the parent took the student off the bus on both these days, the aide brought the student to class. The student arrived in class on time and participated in a full school day on both these days. Subsequent to the filing of the complaint, the aide's starting time was moved to 7:20 a.m.

### Daily Log

The IEP requires, as a supplementary aid and service, that daily notes be sent to and from school and that “a notebook will go with him to special and therapy settings.” There is a requirement that the aide make a notification in the daily log if the student needs to be put in a harness on the school bus. There are no further references or requirements regarding the daily notes. The daily notes are hereinafter referred to as the daily log.

The parent stated that on 9/10/08, the daily log included a comment that the student had a good day although the aide had reported verbally to the parent that the student had a bad day. The aide reported that when she saw the parent at the end of the day, she told her that the student had a good day. The aide further reported that while she was speaking with the parent and the student, he (the student) began running around and misbehaving. The aide made a notation for 9/10/08, in the daily log stating that the student “Had a substitute teacher. OK day considering.” The aide reported that she wrote “OK day considering” because of the student’s behavior while she was speaking with the parent at the end of the day.

### Aide’s Certifications

The IEP does not include a requirement for the student’s aide to be certified in First Aid and CPR. The special services division director reported to the complaint investigation team and confirmed in a letter to the parent dated 9/4/08 that the aide did have certification in First Aid and CPR.

### Placement

The IEP required that the student spend 55% of the day in the regular education environment. The total school day consists of six and a half hours. Of the six and a half hours, placement in the regular education classroom consists of one hour and fifty-five minutes, placement in special education consists of two hours and fifty-five minutes, and time in the regular education environment other than the regular education classroom (PE, recess and lunch) consists of one hour and forty minutes. The parent and district staff reported that on Monday, 9/15/08 because the regular education teacher was absent and the student had demonstrated serious behavioral issues the preceding Friday, the aide made a decision to not bring the student to the regular education classroom. The student, accompanied by the aide, spent four hours and fifty minutes in the special education classroom, and one hour and forty minutes in the regular education environment during PE, recess and lunch, and no time in the regular education classroom. Changes to the student’s schedule were just found for this one day in which there was a substitute teacher in the regular education classroom.

Subsequent to the filing of this complaint the student’s placement was changed to 31% of the time in the regular education environment.

## **CONCLUSIONS OF LAW AND REASONS**

- ISSUE 1:** Whether the LCSD implemented the student’s 9/9/08 IEP with regard to:
- a. The behavior plan, specifically when the student acts out
  - b. Transportation procedures, specifically taking the student to and from home and the timing of taking him off the bus
  - c. Maintenance of an accurate daily log
  - d. Provision of an aide certified in CPR and First Aid
  - e. Placement

State regulations at NAC §388.281.6(g) require that the school district shall “provide the services and instruction deemed necessary for the pupil by the [IEP] committee.” However, “only material failures to implement an IEP constitute violations of the IDEA ... [and] a material failure occurs when there is more

than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811 (9<sup>th</sup> Cir., September 6 2007)

**a. The behavior intervention plan**

This complaint concerned an allegation that the student's IEP was not implemented when the student acted out in class on 9/10/08 and was removed to the principal's office.

In this case, there was a behavior plan in place that required, if the student acted out, that he be placed first in a time-out chair and then be moved to the special education classroom if the move to the time-out chair was not effective. However, the investigation team found no evidence to support the allegation that the student acted out in class or was removed from class on 9/10/08. School staff verified that the substitute principal did interact with the student on 9/10/08; however, it was while the student was in class and the interaction was an exchange of greetings.

*Therefore, the investigation team concluded that the LCSD did not violate state regulations requiring the implementation of the IEP with regard to the behavior provisions.*

**b. Transportation procedures**

This complaint concerned allegations that: 1) the student had not been placed on the school bus but delivered to his parent on the school grounds on 9/10/08; 2) the student was the last one to be taken off the bus on several occasions; and, 3) there was no staff to take the student off the bus on 9/4/08 and 9/11/08 when the bus arrived at school.

In this case, the IEP required the school to transport the student to and from school five days a week. There was no requirement in the IEP regarding the timing of assisting the student off the bus.

There is no dispute that the student was brought to the parent who was on school grounds at the end of the school day rather than being put on the school bus on 9/10/08. The investigation team found that it was understandable that the aide brought the student to the parent at the end of the school day upon observing the parent picking up her daughter and assumed that the parent also wanted to pick-up the student. Because this occurred only once and did not result in the student failing to arrive home, the investigation team concluded it did not fall "significantly short" of the services required by the student's IEP.

Further, the IEP required that the aide assist the student in getting off the bus and to class on time each day. There were no other IEP requirements regarding the timing of assisting the student off of the bus. On 9/4/08 and 9/11/08 the bus arrived at school early, several minutes before the 7:30 a.m., start time of the aide. On both days the aide arrived at the school bus stop at the time the bus was scheduled to arrive at school and was prepared to escort the student off the bus and to class in accordance with the IEP. Since the parent had assisted the student off of the bus on both days, the aide escorted the student to class, prior to the beginning of the school day. In this case, a several minute delay in removing the student from the bus would be not considered an unreasonable delay given minor fluctuations in the arrival times of the daily bus schedule. Such a delay would constitute a "minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP."

*Therefore, the investigation team concluded that the LCSD complied with state requirements to implement the student's 9/9/08 IEP, specifically with regard to transportation procedures.*

**c. Maintenance of the daily log**

This complaint concerned an allegation that the daily log did not accurately reflect the student's behavior on 9/10/08, specifically that it said the student had a good day when the aide had verbally informed the parent that the student had had a bad day.

In this case, the IEP required that a daily log be maintained and sent to and from home each day. On 9/10/08 the daily log reflects that "Had a substitute teacher. OK day considering." Although there appears to be some confusion about what was written in the log on 9/10/08 and the student's behavior at the end of the day while the aide was speaking with the parent, school staff confirmed that what was written in the log accurately reflected the student's behavior during the school day.

*Therefore, the investigation team concluded that the LCSD did not violate state regulations requiring the implementation of the IEP with regard to daily note provision in the IEP.*

**d. Aide's certification**

This complaint concerned an allegation that the aide did not have certification in CPR and First Aid.

In this case, the IEP did not require the student to be provided with an aide who had such certification. The district notified the parent in writing on 9/4/08 that the individual working with the student was certified in CPR and First Aid. This correspondence was intended as a notification and did not create an additional requirement in the student's IEP for staff to hold these certifications. The school district was only required to provide "the services and instruction deemed necessary for the pupil by the committee."

*Therefore, the investigation team concluded that the LCSD did not violate state regulation regarding the implementation of the IEP with regard to assigning an aide to the student who did not have certification in CPR or First Aid.*

**e. Placement**

This case concerned an allegation that on one occasion the student was placed in the resource room instead of the regular education classroom for the school day.

In this case, there is no dispute that on 9/15/08 the student was placed in the special education classroom for the one hour and fifty-five minutes period the student was to supposed to receive services in the general education classroom. School staff indicated that student's behaviors the preceding school day coupled with the regular education teacher's absence were the reasons for this decision. This resulted in the student, for one day receiving one hour and fifty-five minutes less education in the regular education classroom than the IEP required. The district is required to "provide the services and instruction deemed necessary for the pupil by the [IEP] committee." However, in this case, the investigation team found that this was a sole instance in which the district did not follow the IEP relative to the student's placement. Consequently, it was determined that this sole incident constituted a minor discrepancy between the services the school was to provide to the student and the services required by the IEP.

*Therefore, the investigation team concluded that the LCSD complied with state requirements to implement the student's 9/9/08 IEP, specifically with regard to placement.*